

PAUL J. FISHMAN  
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ELECTRONICALLY FILED

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

MARKEITH DAIS, AN INFANT BY HIS  
GUARDIAN AD LITEM, MICHELLE DAIS-  
HARVEY, AND MICHELLE DAIS-HARVEY,  
INDIVIDUALLY,,

*Plaintiffs,*

v.

PATERSON COMMUNITY HEALTH  
CENTER, DR. GURMIT CHILANA, M.D.,  
DR. SHORT, JOHN DOE, 1-100 (FICTIOUS  
NAME),

*Defendants.*

Hon.

Civil Action No.

**NOTICE OF REMOVAL**

To: Superior Court for New Jersey  
Law Division, Passaic County  
77 Hamilton Street  
Paterson, New Jersey 07505

Jennifer Perez, Acting Clerk  
Superior Court of New Jersey  
Hughes Justice Complex  
P.O. Box 971  
Trenton, NJ 08625

Robert G. Hicks, Esq.  
Javerbaum, Wurgaft, Hicks, Kahn,  
Wikstrom & Sinins  
Park Place Legal  
959 South Springfield Avenue  
Springfield, New Jersey 07081  
Attorney for Plaintiffs/Marketh  
Dais, an infant by his Guardian Ad  
Litem, Michelle Dais-Harvey and  
Michelle Dais-Harvey, individually.

Craig S. Combs, Esq.  
Giblin & Combs  
10 Madison Ave, Suite 9  
Morristown, New Jersey 07962  
Attorneys for Defendant, Paterson  
Community Health Center

James B. Sharp, Esq.  
James B. Sharp & Associates, LLC  
4 Campus Drive  
P.O. Box 431  
Parsippany, New Jersey 07054  
Attorneys for Defendant, Gurmit  
Chilana, M.D.

PLEASE TAKE NOTICE that the above-captioned action, previously pending in the Superior Court of New Jersey, Law Division, Passaic County, Docket Number L-2613-07, is hereby removed to the United States District Court for the District of New Jersey. Defendant Paterson Community Health Center, recites as grounds therefor the following:

1. Paterson Community Health Center is named as a defendant in the above-captioned action in the Superior Court of New Jersey, Law Division, Passaic County, Docket Number L-2613-07. A copy of the Summons and

Complaint are attached as Exhibit 1.

2. Plaintiffs Markeith Dais, and Michelle Dais-Harvey have demanded judgment, damages, fees, interest and costs of suit, for injuries they allegedly sustained as the result of the negligence of several defendants including Paterson Community Health Center regarding the provision of medical services.

3. Paterson Community Health Center, is a federally funded health center. In accordance with the Federally Supported Health Centers Assistance Act ("FSHCAA"), 42 U.S.C. § 233(g)-(n), the United States Department of Health & Human Services, Health Resources and Services Administration, Bureau of Primary Health Care deemed Paterson Community Health Center, Inc. to be an entity eligible for coverage under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2401(b), 2671-80 as of December 15, 1993 (renewed 2008) pursuant to 42 U.S.C. § 233(g). FSHCAA provides that the FTCA remedy against the United States for "damage for personal injury, including death, resulting from the performance of medical, surgical, dental or related functions" shall be exclusive of any other civil action or proceedings against deemed entities and their employees. 42 U.S.C. § 233(a).

4. The United States Attorney's Office for the District of New Jersey, pursuant to 28 U.S.C. § 2679(d), 42 U.S.C. § 233(c) and the delegation of authority in 28 C.F.R. § 15.4, has certified that, since December 15, 1993, the Paterson Community Health Center was acting within the scope of employment for the United States of America in providing medical care to plaintiffs. The

Certification of Scope of Employment is attached as Exhibit 2.

5. Plaintiffs' action against the Paterson Community Health Center is therefore governed by the FSHCAA and FTCA. The United States of America is the sole party defendant cognizable under the FTCA for alleged acts of negligence by its deemed employees. 28 U.S.C. § 2679(b). Moreover, the only waiver of sovereign immunity on the part of the United States to be sued for actions in tort is contained in the FTCA.

6. This action is deemed to be an action against the United States and shall proceed against the United States, because the Paterson Community Health Center was acting within the scope of federal employment pursuant to 28 U.S.C. § 2679(d). The United States, however, has not been served with process.

8. The United States District Courts have exclusive jurisdiction over civil actions against the United States such as this one. 28 U.S.C. § 1346(b).


9. Pursuant to 28 U.S.C. §§ 1441(b), 2679(d)(2) and 42 U.S.C. § 233(c), this action must be removed to United States District Court. No bond is required.

WHEREFORE, in accordance with 28 U.S.C. §§ 1441(b), 2679(d) and 42 U.S.C. § 233(c), the above-captioned action, brought in the Superior

Court of New Jersey, Law Division, Passaic County, is now removed to this Court for further proceedings.

Dated: August 10, 2010  
Newark, New Jersey

PAUL J. FISHMAN  
United States Attorney

By:   
SUSAN HANDLER-MENAHM  
Assistant U.S. Attorney

# EXHIBIT 1

JAVERBAUM WURGAFT HICKS KAHN  
WIKSTROM & SININS  
Park Place Legal Center  
959 South Springfield Avenue  
Springfield, New Jersey 07081  
Telephone No. (973) 379-4200  
Attorneys for Plaintiff

RECEIVED & FILED  
SUPERIOR COURT OF NEW JERSEY  
JUN 21 2007  
PASSAIC COUNTY

----- SUPERIOR COURT OF NEW JERSEY  
Plaintiffs LAW DIVISION: PASSAIC COUNTY

MARKEITH DAIS, an-Infant by  
his Guardian ad Litem,  
MICHELLE DAIS-HARVEY, and  
MICHELLE DAIS-HARVEY,  
Individually

Docket No. **L-2613-07**

vs.

CIVIL ACTION

Defendant(s)

PATERSON COMMUNITY HEALTH  
CENTER, DR. GURMIT CHILANA,  
M.D., DR. SHORT, JOHN DOE,  
1-100 (a fictitious name)

MEDICAL MALPRACTICE COMPLAINT  
DEMAND FOR JURY TRIAL  
DESIGNATION OF TRIAL ATTORNEY  
AND DEMAND FOR TRANSCRIPTION AND  
DEMAND FOR ANSWERS TO  
INTERROGATORIES

-----  
Plaintiff, Markeith Dais, an infant by his Guardian ad Litem, Michelle Dais-Harvey, and Michelle Dais-Harvey, individually, residing at 345 Harrison Street in the City of Passaic, County of Passaic and State of New Jersey, complaining of the Defendants, deposes and says:

FIRST COUNT

1. At all times relevant herein, Defendant, Paterson Community Health Center, was a partnership, association and/or professional corporation engaged in providing medical services at its principal location of 32 Clinton Street, Paterson, New Jersey, and holding itself out to the general public as a facility providing reasonably competent medical care and employing reasonably skilled medical personnel.

2. Defendant, Paterson Community Health Center, as a partnership, association and/or professional corporation engaged in providing medical services, owed a duty to provide its patients with reasonably competent

medical personnel who exercise the requisite degree of skill, care and judgment exercised by other similar medical personnel in their profession.

3. At all times relevant herein, Defendants, Dr. Gurmit S. Chilana, MD, Dr. Short, and/or John Doe, 1-100 (a fictitious name), were medical doctors and/or other licensed medical providers licensed by, and practicing in the State of New Jersey, and employed by, or were partners, associates or otherwise were affiliated with the medical facility of Defendant, Paterson Community Health Center.

4. Defendants, Dr. Gurmit S. Chilana, MD, Dr. Short and/or John Doe, 1-100 (a fictitious name), as medical doctors and/or other licensed medical providers licensed by, and practicing in the State of New Jersey, owed a duty to perform all necessary procedures to properly diagnose and/or treat their patients with the requisite degree of skill, care and judgment exercised by other physicians and/or medical providers practicing in the profession.

5. In or about December 3, 1993, Plaintiff, Michelle Dais-Harvey, came under the care and treatment of Defendants, Paterson Community Health Center, Dr. Gurmit S. Chilana, MD, Dr. Short and/or John Doe, 1-100 (a fictitious name), for prenatal care and delivery of an expected child.

6. Defendants, Paterson Community Health Center, Dr. Gurmit S. Chilana, MD, Dr. Short and/or John Doe, 1-100 (a fictitious name), did so negligently and carelessly examine and/or treat Plaintiff, so as fail to diagnose and properly treat intrauterine growth restriction and/or other complications related to Plaintiff's pregnancy.

7. As a direct and proximate result of the negligence of Defendants, Paterson Community Health Center, Dr. Gurmit S. Chilana, MD, Dr. Short and/or John Doe, 1-100 (a fictitious name), as aforesaid, Plaintiff, Michelle Dais-Harvey, was deprived appropriate medical treatment and on or about July 12, 1994, was caused give birth to the infant plaintiff,



Markeith Dais with multiple disabilities and was caused to incur medical expenses and was otherwise damaged.

8. Defendant, Paterson Community Health Center, is liable for the negligence of Defendants, Dr. Gurmit S. Chilana, MD, Dr. Short and/or John Doe, 1-100 (a fictitious name), under the doctrine of respondeat superior.

WHEREFORE, Plaintiff, Markeith Dais, an infant by his Guardian ad Litem, Michelle Dais-Harvey, and Michelle Dais-Harvey, individually demand judgment against Defendants, Paterson Community Health Center, Dr. Gurmit S. Chilana, MD, Dr. Short and/or John Doe, 1-100 (a fictitious name), jointly, severally or in the alternative, in the amount of her damages, together with interest and costs of suit.

JAVERBAUM WURGAFT HICKS KAHN  
WIKSTROM & SININS  
Attorneys for Plaintiffs

by:

  
Robert G. Hicks

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a Trial by jury as to all issues.

JAVERBAUM WURGAFT HICKS KAHN  
WIKSTROM & SININS  
Attorneys for Plaintiffs

by:

  
Robert G. Hicks

**NOTICE OF TRIAL COUNSEL**

Please take notice that Robert G. Hicks, Esq. is hereby designated as Trial Counsel in the above-captioned matter for the firm of Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins, pursuant to Rule 4:25 et. seq.

JAVERBAUM WURGAFT HICKS KAHN  
WIKSTROM & SININS  
Attorneys for Plaintiffs

by:   
Robert G. Hicks

**DEMAND FOR TRANSCRIPTION AND OFFICE RECORDS**

Plaintiff hereby demands that the Defendant produce a certified copy of all office records, telephone calls, billing and payments as well as a typed transcription of any and all of his/her handwritten office records and/or hospital records, within 30 days of service of the Complaint.

**DEMAND FOR ANSWERS TO UNIFORM AND SUPPLEMENTAL INTERROGATORIES**

PLEASE TAKE NOTICE that pursuant to Rule 4:17-1(b)(ii)(2), Plaintiff hereby demands answers to Uniform Interrogatories Form C and Form C(3) within 60 days of the filing of defendant's Answer to this Complaint.

PLEASE TAKE FURTHER NOTICE that pursuant to Rule 4:17-1(b)(i)(1) and Rule 4:17-2, Plaintiff hereby demands answers to the attached Supplemental Interrogatories within 60 days of the filing of defendant's answer to this Complaint.

**SUPPLEMENTAL INTERROGATORIES PERMITTED PURSUANT  
TO RULE 4:17-1(b)(i)**

S1. State whether this defendant has ever served as an expert witness in any matter including, but not limited to matters where you were formally named as an expert, matters in which you provided an expert opinion without being formally named as an expert, etc., and set forth the name of the matter or matters, the name of the attorney or other entity retaining you, whether you testified in either a deposition or at trial and annex hereto copies of any and all reports rendered by you.

S2. As to each person identified in your answer to Form C Uniform Interrogatory 4, set forth a summary of all relevant facts relating to this case known to each such person.

S3. Please describe in complete detail the physical examination which you performed on the plaintiff the first time you saw the plaintiff for the problem for which you were attending the plaintiff, and submit a comprehensive list of your findings.

S4. If you have been certified in any specialty by the National Board of Medical Examiners or by any American Specialty or sub-specialty board, please name each such specialty and/or sub-specialty board by which you are certified and the date of your certification.

S5. Please describe in detail the course of the plaintiff's illness from the time you first undertook the plaintiff's care for the problem for which you were attending to the plaintiff until your professional relationship with the plaintiff terminated.

S6. Please submit a comprehensive list of all diagnostic tests or medical procedures, including routine blood and urine studies, which you ordered or performed on the plaintiff or which were ordered or performed on the plaintiff by someone acting in your behalf, from the time you first undertook the plaintiff's care until your professional relationship with the plaintiff terminated, and indicate as to each such diagnostic test or medical procedure, the date and time it was ordered, the date and time it was performed, the reason it was felt necessary that it be performed, and the test results.

S7. Please specify precisely and describe fully the treatment, including drugs (with dosages, routes and duration of administration) IV fluids, surgery, physiotherapy, prosthesis, bandages and any other therapeutic agents or measures, which you ordered or prescribed for the plaintiff from the time you first undertook the plaintiff's care until the time when your professional relationship with the plaintiff terminated, indicating as to each the date, time and manner in which you ordered or prescribed it, the date and time it was instituted and the date and time it was completed or discontinued.

S8. State whether any photographs, videos or other recordings of any type were made of any treatment or procedure performed upon the plaintiff and if so identify all such photographs, videos or other recordings and provide a copy of all such photographs, videos or other recordings herewith.

DATED: June 20, 2007

CERTIFICATION

Pursuant to the requirements of Rule 4:5-1 (NOTICE OF OTHER ACTIONS), I, the undersigned, do hereby certify to the best of my knowledge, information and belief, that except as hereinafter indicated, the subject matter of the controversy referred to in the within pleading is not the subject of any other Cause of Action, pending in any other Court, or of a pending Arbitration Proceeding, nor is any other Cause of Action or Arbitration Proceeding contemplated;

1. OTHER ACTIONS PENDING.....YES \_\_\_\_\_ NO X  
 A. If YES - Parties to other Pending Actions.  
 B. In my opinion, the following parties should be joined in the within pending Cause of Action.
2. OTHER ACTIONS CONTEMPLATED?.....YES \_\_\_\_\_ NO X  
 A. If YES - Parties contemplated to be joined, in other Causes of Action.
3. ARBITRATION PROCEEDINGS PENDING?.....YES \_\_\_\_\_ NO X  
 A. If YES - Parties to Arbitration Proceedings.  
 B. In my opinion, the following parties should be joined in the pending Arbitration Proceedings.
4. OTHER ARBITRATION PROCEEDINGS CONTEMPLATED?.....YES \_\_\_\_\_ NO X  
 A. If YES - Parties contemplated to be joined to Arbitration Proceedings.

In the event that during the pendency of the within Cause of Action, I shall become aware of any change as to any facts stated herein, I shall file an amended certification and serve a copy thereof on all other parties (or their attorneys) who have appeared in said Cause of Action.

JAVERBAUM WURGAFT HICKS KAHN  
 WIKSTROM & SININS  
 Attorneys for Plaintiffs

by:   
 Robert G. Hicks

DATED: June 20, 2007

RECEIVED  
PASSAIC COUNTY  
SHERIFF'S OFFICE

2007 JUL -6 A 11:31

JAVERBAUM WURGALT HICKS KAHN  
WIKSTROM & SININS  
Park Place Legal Center  
959 South Springfield Avenue  
Springfield, New Jersey 07081  
Telephone No. (973) 379-4200  
Attorneys for Plaintiff

-----  
Plaintiff(s)

MARKEITH DAIS, an Infant by his  
Guardian ad Litem, MICHELLE DAIS-  
HARVEY, and MICHELLE DAIS-HARVEY  
Individually

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: PASSAIC COUNTY

Docket No. PAS-L-2613-07

vs.

CIVIL ACTION  
SUMMONS

Defendant(s)

PATERSON COMMUNITY HEALTH CENTER,  
DR. GURMIT CHILANA, DR. SHORT,  
JOHN DOE, 1-100 (a fictitious name)

-----  
FROM THE STATE OF NEW JERSEY, To The Defendant(s) Named Above:

Paterson Community Health Center

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, CN-971, Trenton, NJ 08625. A \$135.00 filing fee payable to the Clerk of the Superior Court and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an Attorney, you may call the Legal Services office in the county where you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

DATED: July 2, 2007

DONALD F. PHELAN

Clerk of the Superior Court

Name of defendant to be served: Paterson Community Health Center  
Address: 32 Clinton Street, Paterson NJ

PASSAIC SUPERIOR COURT  
PASSAIC COUNTY COURTHOUSE  
77 HAMILTON STREET  
PATERSON NJ 07505

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (973) 247-8183  
COURT HOURS

DATE: JUNE 21, 2007  
RE: DAIS VS PATERSON COMMUNITY HEALTH CENTER  
DOCKET: PAS L -002613 07

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 3.

DISCOVERY IS 450 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS  
FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON RONALD B. SOKALSKI

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 004  
AT: (973) 247-8196.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A  
CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.  
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE  
WITH R.4:5A-2.

ATTENTION:

ATT: ROBERT HICKS  
JAVERBAUM WURGAFT HICKS K W & S  
959 S SPRINGFIELD AVENUE  
SPRINGFIELD NJ 07081

JURVEC0